

CHAPTER 2 RULE MAKING

[Ch 2, IAC 7/1/75 rescinded 3/7/79; see Ch 4]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—2.1(123,17A) Purpose and scope. These rules shall govern the practice and procedure in all rule-making proceedings of the alcoholic beverages division.

185—2.2(123,17A) Petition for adoption of rules.

2.2(1) Any interested person may petition the division for the adoption, amendment, or repeal of a rule.

2.2(2) Form of petition. A petition for rule making shall comply with 185—subrule 12.2(1). The petition (original and two copies) shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

185—2.3(123,17A) Commencement of proceedings.

2.3(1) The division shall give notice of the administrator's intentions to adopt, amend or repeal any rule by causing notice to be published in the Iowa Administrative Bulletin at least 35 days in advance of the intended action. The notice of intended action may be initiated by the division on its own motion or upon the filing of a petition for rule making by any interested person.

2.3(2) Division's action on petition. Within 60 days after the filing of a petition for rule making, the division shall either deny the petition by written order on its merits, stating the reasons therefor; commence rule-making procedures as stated in subrule 2.3(1) or adopt a rule pursuant to Iowa Code subsection 17A.4(2).

185—2.4(123,17A) Written statements of position.

2.4(1) *Persons.* Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment or repeal of a rule.

2.4(2) *Filing.* Written statements of position shall be filed with the division not later than 30 calendar days after publication of notice of rule making in the Iowa Administrative Bulletin. If the publication of a notice of rule making is not required by law, written statements of position may be filed as authorized by the division.

2.4(3) *Form of written statement of position.* A written statement of position shall comply with 185—subrule 12.2(2), be addressed to the administrator of the alcoholic beverages division, and specifically identify the proposed rule to which the statement pertains. The original and two copies of a written statement shall be filed with the division.

2.4(4) *Service.* Written statements of position shall be served by the author upon the petitioner, if any, at the time of filing.

185—2.5(123,17A) Counterstatements of position.

2.5(1) *Petitioner.* The petitioner, if any, or any interested party, may file a counterstatement of position with the division in response to written statements of position.

2.5(2) *Filing.* Counterstatements of position, if any, shall be filed with the division not later than 15 calendar days after the petition's receipt of the written statement of position to which the petitioner is responding.

2.5(3) *Form of counterstatements of position.* A counterstatement of position shall comply with 185—subrule 12.2(3). The original and two copies shall be filed with the division.

2.5(4) *Service.* Counterstatements of position shall be served by the petitioner at the time of the filing, upon the authors of written statements of position to which the petitioner is responding.

185—2.6(123,17A) Requests for oral presentation.

2.6(1) *Filing.* Requests for oral presentation shall be filed not later than 30 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin.

2.6(2) *Form of request for oral presentation.* A request for oral presentation shall comply with 185—subrule 12.2(4). The original and two copies shall be filed with the division.

2.6(3) *Action on proper request.* Within 15 days of the filing of a request for oral presentation, the division shall determine if the request is in accordance with Iowa Code section 17A.4. If the division determines that the request complies with Iowa Code section 17A.4, it shall, by written notice, schedule oral presentations on the rule making and shall cause the notice of oral presentations to be published in the Iowa Administrative Bulletin. The notice shall state the date, time, and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceedings. The notice of oral presentation on the rule making shall be not less than 20 calendar days after the publication of notice. The division shall serve a similar notice on the party requesting oral presentation and on the petitioner, if any.

2.6(4) *Action on improper request.* If the division determines that a request for oral presentation does not comply with Iowa Code chapter 17A, it may deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule oral presentation as described in subrule 2.6(3).

2.6(5) *Action on own motion.* The division may, on its own motion, schedule oral presentation on the rule making in accordance with subrule 2.6(3).

185—2.7(123,17A) Rule-making oral presentation.

2.7(1) *Written appearance.* Upon the filing of a written appearance, any interested person may participate in rule-making oral presentations in person or by counsel. A written appearance shall be filed not less than two calendar days prior to oral presentation. The division may, in its discretion, waive the filing of a written appearance as a condition precedent to participation in oral presentation. The division staff shall not be required to file a written appearance.

2.7(2) *Form of written appearance.* A written appearance shall be in letter form, stating the name of the person requesting appearance, their interest in the rule-making action, and their address or the address of their counsel, if any. The letter shall be addressed to the Administrator of the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

2.7(3) *Oral presentations.* Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments or arguments concerning the proposed adoption, amendment or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination, provided however, the division may, in its discretion, permit the questioning of participants by any interested person, and provided further that no participant shall be required to answer any question.

2.7(4) *Rebuttal and limitations.* The division may, in its discretion, permit rebuttal statements of position subsequent to the adjournment of the rule-making oral presentation. The division may limit the time of any oral presentation and the length of any written presentation.

185—2.8(123,17A) Rule-making decision.

2.8(1) *Adoption, amendment, or repeals.* The division shall, by written order, adopt, amend or repeal the rule pursuant to the rule-making proceeding or dismiss the proceeding in accordance with Iowa Code 17A.4. The division may specify the effective date of the adoption, amendment or repeal of a rule.

2.8(2) *Statements.* Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person, the division shall issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of a rule or termination of the rule-making proceeding, including the reasons why the division overruled the positions in opposition to the division. A request for statement shall comply with 185—subrule 12.2(5).

These rules are intended to implement Iowa Code sections 123.4, 123.21 and 17A.4.

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